

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CREIGHTON TAKATA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC. F/K/A, BIOPTIX,
INC., JOHN O'ROURKE, JEFFREY G.
MCGONEGAL, BARRY HONIG,
CATHERINE DEFRANCESCO, MICHAEL
BEEGHLEY, JOHN STETSON, MARK
GROSSMAN, ANDREW KAPLAN, MIKE
DAI, JASON LES and ERIC SO,

Defendants.

Case No. 18-cv-2293 (FLW) (ZNQ)

Oral Argument Requested

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT MARK
GROSSMAN'S MOTION TO DISMISS
PLAINTIFF'S CORRECTED
CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT**

MOTION DATE: NOVEMBER 4, 2019

KEVIN G. WALSH
kwalsh@gibbonslaw.com
KATE E. JANUKOWICZ
kjanukowicz@gibbonslaw.com
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Tel: 973.596.4769
Fax: 973.639.6470

PERRIE M. WEINER (*pro hac vice* to be filed)
perrie.weiner@backermckenzie.com
EDWARD D. TOTINO (*pro hac vice* to be filed)
edward.totino@backermckenzie.com
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Tel: 310.201.4728
Fax: 310.201.4721

Attorneys for Defendant
MARK GROSSMAN

Defendant Mark Groussman ("Groussman"), by and through his undersigned attorneys, respectfully requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of a document cited in his Memorandum in Support of his Motion to Dismiss Plaintiffs' Corrected Consolidated Amended Class Action Complaint (the "Amended Complaint"). The referenced document is attached as Exhibit A to the accompanying of Declaration of Kevin G. Walsh ("Walsh Dec.").

Pursuant to Federal Rule of Evidence 201(b)(2), this Court may take judicial notice of facts that are “not subject to reasonable dispute” and that are capable of “accurate[] and read[y] determin[ation] from sources whose accuracy cannot reasonably be questioned.” Under Federal Rule of Evidence 201(c)(2), this Court “must take judicial notice if a party requests it and the court is supplied with the necessary information.”

Groussman requests that the Court take judicial notice of the following document that Defendant Riot Blockchain, Inc. (“Riot”) filed with the Securities Exchange Commission (“SEC”):

- Riot's Form S-3 Registration Statement, filed by Riot with the SEC on January 5, 2018 (the “Form S-3”). Walsh Dec. Ex. A.

The Form S-3 is discussed and paraphrased at length by Plaintiff in the Amended Complaint. *See* Amended Complaint ¶¶ 175, 309, 311-12, 401. In particular, Plaintiff relies on the Form S-3 in an effort to establish loss causation, an essential element of Count II of the Amended Complaint. *See id.* ¶ 401. On a motion to dismiss, courts may consider documents “integral to or explicitly relied upon in the complaint.” *See In re NAHC, Inc. Securities Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002) (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997)). Even when not specifically cited in a complaint, Courts routinely take judicial notice of SEC filings because their contents are inherently reliable. *See In re NAHC*, 306 F.3d at 1331 (citing *Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (taking judicial notice of public disclosure documents filed with SEC).

Dated: September 30, 2019

GIBBONS P.C.

By: s/ Kevin G. Walsh
Kevin G. Walsh
kwalsh@gibbonslaw.com

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Tel: 973.596.4769
Fax: 973.639.6470

Attorneys for Defendant Mark Groussman